



JAMES D. "BUDDY" CALDWELL  
ATTORNEY GENERAL

State of Louisiana  
DEPARTMENT OF JUSTICE  
P.O. BOX 94005  
BATON ROUGE  
70804-9005

FEB 11 2011  
OPINION 08-0250

Honorable James "Mack" McGehee  
Mayor  
Mr. Danny Stogner  
Councilman at Large  
City of Bogalusa  
Post Office Drawer 1179  
Bogalusa, LA 70429-1179

150 – TAXATION – Disposition & proceeds of a special tax  
129 – TAXATION – Levy and Assessment (ad valorem taxes)

Administrative expenses that are incurred as a direct result of activities carried out in furtherance of the specified purposes listed in a sales and use or an ad valorem tax proposition may be paid out of the tax proceeds using a reasonable allocation method; however, any administrative expenses incurred as general operating expenses of a political subdivision cannot be paid out of dedicated tax funds.

Dear Mayor McGehee and Councilman Stogner:

Your request for an Attorney General's Opinion has been assigned to me for research and reply. You have asked for an opinion concerning whether the proceeds of sales and use and ad valorem taxes may be used to pay the allocable costs of various departments, particularly those of the City's general administrative staff.

In your letter, you give the following example of how the City allocates expenses of administrative personnel such as payroll or finance department employees to various city operations:

The cost of a payroll clerk can be reasonably allocated among various departments based on the amount of time he or she might spend processing payroll for, say, the police department, fire department, or street department, etc., based on some reasonable allocation method for his or her time. Then, the cost of that employee might be covered by a pro-rata appropriation of funds dedicated to those specific purposes.

Administrative expenses that are incurred as a direct result of activities carried out in furtherance of the specified purposes listed in a sales and use tax proposition may be paid out of the tax proceeds; however, any administrative expenses incurred as general operating expenses of a political subdivision cannot be paid out of dedicated sales and use tax funds. Atty. Gen. Op. No. 89-382. It is the opinion of this office that this equally applies to ad valorem taxes and applies regardless of whether the tax proposition specifically allows use of the proceeds for "operations." In all cases, we believe that a reasonable allocation method must be used to allocate the expenses among the various tax proceeds.

By way of example, in the case of a municipality (although the same reasoning would apply to parish or other multi-purpose governmental units), activities that would be considered general administrative expenses would include the salaries of the Mayor, Clerk, City Council Members, and the overall expenses of operating and maintaining the municipality's administrative offices, because all municipalities incur these kinds of expenses regardless of their other activities. Other services such as the operation of municipal utility systems, recreation, libraries, industrial parks, etc., may or may not be provided out by a particular municipality, depending on its circumstances. In those cases, general operating expenses that are directly attributable to a specific department or program may, under a reasonable system of allocation, be paid for from tax revenues that are dedicated to the same department or program.

To illustrate, if a municipality operates a water and/or sewer department (which many do not operate), this may require the employment of some greater number of administrative employees, for example, to handle additional payroll, personnel matters and/or legal disputes related to that department. The activity may also require additional office space to house the department and its activities.

In a larger community, these activities might be located in a separate building, with full-time employees who devote all of their time to the department in question. In that case, the departmental expenses are clearly payable from taxes dedicated to the same purpose or department.

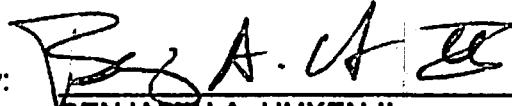
However, in smaller municipalities where personnel and equipment may fill multiple roles, it would be inefficient and unreasonable to disallow a reasonable allocation formula and instead to require that all such expenses to be treated as general administrative expenses. In those cases, if the municipality can reasonably attribute and allocate these additional expenses to the department in question, then such expenses can be paid from the applicable dedicated tax. To require a physical separation of such departments and their employees from general city activities in order to justify paying their allocable costs from a dedicated tax would be both inefficient and unreasonably burdensome. Of course, the local governmental unit would be responsible for documenting and retaining records showing the allocation method used, which, for example, might be an employee's total salary multiplied by a formula based upon the number of hours the employee performed a certain task for a certain department divided by the total number of hours worked.

We trust this adequately responds to your request. However, if our office can be of further assistance, please do not hesitate to contact us.

Yours very truly,

JAMES D. "BUDDY" CALDWELL  
Attorney General

By:



BENJAMIN A. HUXEN II  
Assistant Attorney General

JDC/BAHII:crt

## RS 42:63

### §63. Prohibitions

A.(1) Except as otherwise provided in this Subsection, no person holding an elective office, appointive office, or employment in any of the branches of state government or of a political subdivision thereof shall at the same time hold another elective office, appointive office, or employment in the government of a foreign country, in the government of the United States, or in the government of another state.

(2) A person holding employment in the government of the United States and at the same time holding an appointive office in a political subdivision of the state shall not be in violation of this Subsection, unless the particular nature of his employment in combination with the duties and interests of his appointive office in a political subdivision of this state is otherwise prohibited by this Part or is found to be adverse to the public interest as set forth in R.S. 42:61.

(3)(a) A person holding employment in the government of the United States and at the same time holding part-time elective office shall not be in violation of this Subsection, unless the particular nature of his employment in combination with the duties and interests of his elective office is otherwise prohibited by this Part or is found to be adverse to the public interest as set forth in R.S. 42:61.

(b) For purposes of this Paragraph, "part-time elective office" shall mean an elective office the holder of which is deemed to be a part-time public servant pursuant to Article X, Section 29.1(A) of the Constitution of Louisiana.

B. Except as otherwise provided by the Louisiana constitution, no person holding office or employment in one branch of the state government shall at the same time hold another office or employment in any other branch of the state government.

C. No person holding an elective office in the government of this state shall at the same time hold another elective office, a full-time appointive office, or employment in the government of this state or in the government of a political subdivision thereof.

D. No person holding an elective office in a political subdivision of this state shall at the same time hold another elective office or full-time appointive office in the government of this state or in the government of a political subdivision thereof. No such person shall hold at the same time employment in the government of this state, or in the same political subdivision in which he holds an elective office. In addition no sheriff, assessor, or clerk of court shall hold any office or employment under a parish governing authority or school board, nor shall any member of any parish governing authority or school board hold any office or employment with any sheriff, assessor, or clerk of court.

E. No person holding a full-time appointive office or full-time employment in the government of this state or of a political subdivision thereof shall at the same time hold another full-time appointive office or full-time employment in the government of the state of Louisiana, in the government of a political subdivision thereof, or in a combination of these.

F. No person holding an elective office in any branch of state government shall contract, on a full-time basis, to provide health or health-related services for any agency of state government. No person engaged in a contract on a full-time basis, with any agency of state government to provide health or health-related services shall hold an elective office in any branch of state government.

Added by Acts 1979, No. 700, §1. Acts 1987, No. 837, §1, eff. July 20, 1987; Acts 1989, No. 60, §1; Acts 1995, No. 673, §1; Acts 2009, No. 178, §1.

**Van H. Kyzar**  
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10<sup>th</sup> Judicial District  
200 Church Street, 2<sup>nd</sup> Floor  
Natchitoches, Louisiana 71457

June 24, 2010

Ms. Catherine Hamilton  
Administrator  
Natchitoches Parish Police Jury  
Courthouse Building  
Natchitoches, Louisiana 71457

RE: Expense Allocations

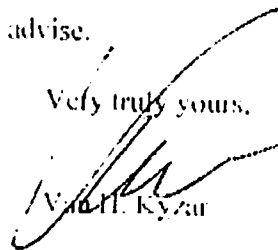
Dear Catherine:

Receipt is acknowledged of your letter of June 24, 2010 concerning a request for a written opinion as to the allocation of various administrative salary expenses to certain dedicated funding sources of the police jury. As indicated verbally, it is my opinion that it is legal to allocate these administrative salary expenses to these funds in proportion to the time expended by the personnel in managing the particular fund and area covered by the fund. For example, if you are spending 15% of your time as administrator handling the affairs related to Government Building maintenance, the jury can allocate 15% of your salary to be paid from or reimbursed by the Government Buildings maintenance fund. So long as you can justify such if requested to do so, the allocation should pass legal scrutiny. The only caveat to this opinion would be if a specific dedicated fund source provision disallowed specifically the payment of administrative expenses or salaries from such source.

As advised orally, I have asked that the jury also seek and secure an opinion on this question from your CPA Mr. Mark Thomas.

Should you need anything further, please advise.

Very truly yours,



Van H. Kyzar